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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,533	09/05/2000	Dominique P. Bridon	REDC-1510USA	3921
20872	7590	10/22/2002	EXAMINER	
MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482			PARKIN, JEFFREY S	
		ART UNIT	PAPER NUMBER	
		1648		
		DATE MAILED: 10/22/2002		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/623,533	BRIDON ET AL.	
	Examiner	Art Unit	
	Jeffrey S. Parkin, Ph.D.	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 July 2002.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 8-18 and 22-30 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 19-21 is/are rejected.
- 7) Claim(s) 1-7 and 19-21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____ .
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,5,5,6</u> | 6) <input type="checkbox"/> Other: _____ . |

Detailed Office Action

Status of the Claims

1. Applicants' election with traverse of Group I (claims 1-7 and 19-21) in paper no. 10 is acknowledged. Applicants traverse and submit the claimed invention has a special technical feature and the issue of a multiple inventive concepts was never broached 5 during the PCT stage of the application. Concerning the latter argument, applicants are reminded that if the international application underwent preliminary examination, the International Preliminary Examination Report (Form PCT/IPEA/409) reflects the International Preliminary Authority's **non-binding** opinion regarding novelty, inventive step and industrial applicability. The examiner may adopt any portion or all of this opinion upon consideration in 10 the national stage so long as it is consistent with U.S. practice. M.P.E.P. § 1893.03(e). Applicants are further advised that if the examiner finds that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the 15 invention to which the claims shall be restricted. **Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner.** Review of any such requirement is provided under §§ 20 1.143 and 1.144. Concerning the former argument, applicants were previously advised in paper no. 9 that the claimed invention lacks a special technical feature as follows:

25 This application was filed under 35 U.S.C. § 371 and is subject to unity of invention practice pursuant to 35 U.S.C. § 121 and 372. This application contains the following inventions or groups of inventions which are not so linked as to form a single inventive concept under PCT Rule 13.1. In accordance with 37 C.F.R. § 1.499, 30 applicants are required, in response to this action, to elect a single invention to which the claims must be restricted.

- a. Group I, claim(s) 1-7 and 19-21, drawn to anti-**HIV** peptides.

- b. Group II, claim(s) 1-3, 8-10, and 22-24, drawn to anti-RSV peptides.
- 5 c. Group III, claim(s) 1-3, 11-13, and 25-27, drawn to anti-HPIV peptides.
- d. Group IV, claim(s) 1-3, 14-16, and 28-30, drawn to anti-MV peptides.
- 10 e. Group V, claim(s) 1-3, 17, and 18, drawn to anti-SIV peptides.

The inventions listed as Groups I-V do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: each of the identified groups is directed toward structurally and functionally different viral peptides thereby necessitating separate searches. Applicants are further advised that **a single peptide must be elected from each group**, since each peptide constitutes a unique and independent invention requiring independent searches.¹ For instance, if Group I is elected, a single peptide should be selected from the group of SEQ ID NOS.: 1-9. Because of the structural unrelatedness of the various peptides, a special technical feature is not present. This is **not** a species election requirement.

Contrary to applicants' arguments, the claimed invention does not meet the requirements concerning unity of invention as set forth in the preceding paragraphs. Accordingly, **the requirement is still deemed to be proper and is therefore made FINAL**. Claims 8-18 and 22-30 are withdrawn from further consideration.

Information Disclosure Statement

2. The information disclosure statements filed 06 February, 30 May, 35 and 09 July, 2001, have placed in the application file and the information referred to therein has been considered.

¹ Applicants are advised that the Examiner would consider claims encompassing peptides with more than one sequence identifier provided the peptides shared a well-conserved amino acid sequence. For instance, if a group of peptides consisted of DP-178 derivatives differing only in a single amino acid addition, substitution, or deletion, the Examiner would consider examining a reasonable number of said peptides (e.g., ten) together.

Claim Objections

3. Claims 1-7 and 19-21 are objected to because of the following informalities: the claims fail to identify the elected invention. Applicants are reminded of the lack of unity of invention requirement set forth in paper no. 9 and the election of the DP-178 peptide in paper no. 10. Appropriate amendment of the claim language to reflect this election is required.

35 U.S.C. § 112, Second Paragraph

4. Claims 1-7 and 19-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The reference to a "reactive group" is vague and indefinite since the precise chemical structure of the modified anti-viral peptide is not readily manifest and cannot be determined from the claim language. Appropriate amendment of the claim language to clearly and unambiguously identify the claimed subject matter is required (i.e., An isolated and purified chemically modified anti-viral peptide consisting of a DP-178 peptide that has been modified to contain a succinimidyl or maleimido group at the _, wherein said peptide displays a reduced susceptibility to protease degradation as compared to the unmodified DP-178 peptide ...).

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Correspondence

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5. Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Official communications should be directed toward one of the following Group 1600 fax numbers: (703) 308-4242 or (703) 305-3014. Informal communications may be submitted directly to the Examiner through the following fax number: (703) 308-4426. Applicants are encouraged to notify the Examiner prior to the submission of such documents to facilitate their expeditious processing and entry.

6. Any inquiry concerning this communication should be directed to Jeffrey S. Parkin, Ph.D., whose telephone number is (703) 308-2227. The examiner can normally be reached Monday through Thursday from 8:30 AM to 6:00 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner are unsuccessful, the examiner's supervisors, James Housel or Laurie Scheiner, can be reached at (703) 308-4027 or (703) 308-1122, respectively. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

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Respectfully,

Jeffrey S. Parkin, Ph.D.
Patent Examiner
Art Unit 1648

19 October, 2002